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Filing date: **08/28/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175750
Party	Plaintiff Swinger International S.p.A.
Correspondence Address	Angelo Notaro Notaro & Michalos P.C. 100 Dutch Hill Road, Suite 110 Orangeburg, NY 10962 UNITED STATES anotaro@notaromichalos.com
Submission	Other Motions/Papers
Filer's Name	Angelo Notaro
Filer's e-mail	anotaro@notaromichalos.com
Signature	/G96-176-AN/
Date	08/28/2007
Attachments	Motion to Compel.pdf (65 pages)(1762842 bytes)

**MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS
UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37**

-1-

Opposer's discovery requests, by any Order of this Board as a result of Opposer's instant Motion, in which to propound supplemental discovery requests to Applicant, and that the close of Opposer's and Applicant's testimony periods be re-set accordingly.

Opposer has attached true and correct copies of its First Set of Interrogatories, First Set of Requests for the Production of Documents and Things, and First Set of Admissions, which are the subject of this Motion ("Opposer's discovery requests") as Exhibit A to Opposer's accompanying Memorandum of Law in support of this Motion, in accordance with 37 C.F.R. § 2.127(a).

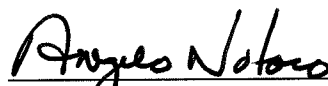
To date, Applicant has failed to respond to any of Opposer's discovery requests.

In support of this Motion, Opposer submits its Memorandum and the Declaration of Angelo Notaro, Esq., pursuant to 37 C.F.R. § 2.120(e).

This Motion to Compel is being filed prior to November 7, 2007, the Opening date of Opposer's testimony period.

Dated: August 27, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Angelo Notaro", is written over a horizontal line.

Angelo Notaro
John Zaccaria
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100
(845) 359-7700
Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37** has been served by causing a copy thereof to be sent first class mail, postage prepaid, on August 27, 2007 to:

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001



Demetra Falto

EXHIBIT A

Applicant.

Opposition No. 91175750

OPPOSER'S FIRST DOCUMENT REQUESTS TO APPLICANT

Opposer, Swinger International SPA, (hereinafter referred to as "Opposer"), hereby requests that Applicant, Tsz Wai Cheng (hereinafter "Applicant"), pursuant to Rule 34, Fed. R. Civ. P. and 37 C.F.R. §2.120, produce at the offices of the undersigned counsel or at such other location as may be mutually agreeable, and permit Opposer, or someone acting on their behalf, to inspect and copy or photograph the documents and things listed below which are in Applicant's possession, custody or control within thirty (30) days from the date of service hereof. Alternatively, Applicant may attach copies of the requested documents to its written response. As directed by Fed. R. Civ. P. 34, Applicant shall serve a written response to this request within thirty (30) days after service.

A. DEFINITIONS AND INSTRUCTIONS

1. "Applicant's mark" shall mean the trademark of U.S. Trademark Application 78/831,113.
2. "Opposer's Trademark" shall mean the trademark "BYBLOS".
3. "Opposition" shall mean Opposition Proceeding No. 91175750 pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.
4. "Notice of Opposition" shall mean the notice of opposition filed by Opposers in the Opposition.
5. "Person" shall mean any natural person, corporation, association, firm, partnership or other business or legal entity.
6. "Communication" shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
7. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rules of Civil Procedure, including 34(a), without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
8. Identify (With Respect to Persons). When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the job title and the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent

discovery requesting the identification of that person.

9. Identify (With Respect to Documents). When referring to documents, to "identify" means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

10. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

11. The terms "all" and "each" shall be construed as all and each.

12. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

13. The use of the singular form of any word includes the plural and vice versa.

14. All documents and things produced in response to these requests should be arranged as they are kept in the ordinary course of business, or should be organized and labeled to correspond with the request numbers in these requests for documents and things.

15. If a claim of privilege is asserted in responding or objecting to any request, and information is not provided on the basis of such assertion, it is requested that:

(i) the person asserting the privilege shall in the response or objection identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) the following information shall be provided in the response or objection, unless divulgence of such information would cause disclosure of privileged information:

- (a) for documents: (1) the type of document, e.g., letter or memorandum; (2) general subject matter of the document; (3) the date of the document; (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate, the author, addressee and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;
- (b) for oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the person present to the person making the communication; (2) the date and place of communication; (3) the general subject matter of the communication.

B. DOCUMENT REQUESTS

1. All documents and things requested to be identified or described in responses of the Applicant to Opposer's First Interrogatories to Applicant.

2. All documents concerning any research, survey, test, poll, interview, study or investigation concerning the Applicant's mark.

3. All documents relating to trademark searches concerning the Applicant's mark.

4. A sample of each different container, label, packaging, brochure, pamphlet, instruction sheet, instructional manual, warranty card, flyer, catalog, catalog sheet, product and service information sheet, invoice form, purchase order form, point of sale display, advertisement, mailer, or other item of promotional material including the Applicant's mark, ever used in the advertising, marketing, distribution, or sale of products of the Applicant.

5. A sample of each different advertisement and item of publicity or of a publicity nature printed or disseminated by, for or about Applicant in which Applicant's mark

appears.

6. All documents which relate or refer to any of Applicant's attempt to register the Applicant's mark in the United States.

7. All documents which comprise, relate to or refer to any rights in the Applicant's mark which Applicant claims to have acquired through assignment, license or other transfer or which Applicant has licensed, assigned or transferred to another person.

8. All documents concerning Applicant's use or intention-to-use Applicant's mark in the United States.

9. All documents and things concerning the trade channels through which goods bearing Applicant's mark have been marketed, distributed, shipped or sold by or on behalf of Applicant.

10. All documents concerning any confusion or mistake between the Applicant, goods or packaging of the Applicant or Applicant's mark, on the one hand, and Opposer, Opposer's Trademark or goods or packaging of Opposer on the other hand.

11. All documents concerning any communications between Applicant and any third party concerning Opposer, Opposer's use of Opposer's Trademark.

12. Documents and things, including, but not limited to, any computer printouts or other summaries sufficient to show Applicant's dollar and/or unit volume of sales for each of the goods manufactured, distributed, transferred or sold in connection with Applicant's mark since Applicant's date of first use.

Dated: May 23, 2007

A handwritten signature in cursive script, appearing to read "Angelo Notaro", is written over a horizontal line.

Angelo Notaro
John Zaccaria
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100
(845) 359-7700
Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing ***Opposer's First Document Requests to Applicant*** has been served by causing a copy thereof to be sent first class mail, postage prepaid, on May 23, 2007 to:

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001



Demetra Falto

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/831,113
Filed March 7, 2006
For the mark BYBLE (Stylized)
Published in the Official Gazette on November 17, 2006

-----X
Swinger International SPA,

Opposer,

v.

Tsz Wai Cheng,

Applicant.
-----X

Opposition No. 91175750

OPPOSER'S FIRST INTERROGATORIES TO APPLICANT

Opposer, Swinger International SPA, (hereinafter referred to as "Opposer"), hereby requests that Applicant, Tsz Wai Cheng (hereinafter "Applicant"), pursuant to Rule 33, Fed. R. Civ. P. and 37 C.F.R. §2.120, answer the following interrogatories fully, in writing, and under oath, within thirty (30) days from the date of service hereof, in accordance with all applicable rules of the Federal Rules of Civil Procedure.

For the convenience of the Trademark Trial and Appeal Board and counsel, it is requested that each interrogatory be set forth immediately preceding the answer thereto.

A. DEFINITIONS AND INSTRUCTIONS

1. "Applicant's mark" shall mean the trademark of U.S. Trademark Application

78/831,113.

2. "Opposers' Trademark" shall mean the trademark "BYBLOS".

3. "Opposition" shall mean Opposition Proceeding No. 91175750 pending before the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

4. "Notice of Opposition" shall mean the notice of opposition filed by Opposer in the Opposition.

5. "Person" shall mean any natural person, corporation, association, firm, partnership or other business or legal entity.

6. "Communication" shall mean the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

7. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rules of Civil Procedure, including 34(a), without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

8. Identify (With Respect to Persons). When referring to a person, to "identify" means to give, to the extent known, the person's full name, present or last known address, and when referring to a natural person, additionally, the job title and the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

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matter; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s).

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12. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

13. The use of the singular form of any word includes the plural and vice versa.

14. All documents and things produced in response to these requests should be arranged as they are kept in the ordinary course of business, or should be organized and labeled to correspond with the request numbers in these requests for documents and things.

15. If a claim of privilege is asserted in responding or objecting to any request, and information is not provided on the basis of such assertion, it is requested that:

(i) the person asserting the privilege shall in the response or objection identify the nature of the privilege (including work product) which is being claimed and if the privilege is being asserted in connection with a claim or defense governed by state law, indicate the state's privilege rule being invoked; and

(ii) the following information shall be provided in the response or objection, unless divulgence of such information would cause disclosure of privileged information:

(a) for documents: (1) the type of document, e.g., letter or memorandum; (2) general subject matter of the document; (3) the date of the document; (4) such other information as is sufficient to identify the document for a subpoena duces tecum, including, where appropriate,

the author, addressee and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, and any other recipient to each other;

- (b) for oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the person present to the person making the communication; (2) the date and place of communication; (3) the general subject matter of the communication.

B. INTERROGATORIES

INTERROGATORY NO. 1

Identify all goods and services that Applicant has offered and provided or intends to offer and provide under Applicant's mark.

INTERROGATORY NO. 2

For each good and service identified in response to Interrogatory No. 1, state whether such goods and services have been offered, sold or otherwise made available in interstate commerce and, if so:

- (i) state the date on which such goods and services were first presented, offered, sold or otherwise made available to a potential customer;
- (ii) state the date on which such goods and services were first offered, sold or otherwise made available to a customer;
- (iii) identify, by name and address, the customer, the nature and extent of the

goods and services offered, sold or otherwise made available under Applicant's marks rendered on such date;

- (iv) the dollar amount billed by Applicant for providing such goods and services;
and
- (v) the locations including addresses, whether goods and services were offered,
sold or otherwise made available.

INTERROGATORY NO. 3

Identify all documents, including without limitation, customer presentations, invoices, statements or bills which refer, reflect or otherwise evidence the first use and first use in commerce of Applicant's mark.

INTERROGATORY NO. 4

State the facts and circumstances surrounding Applicant's decision to adopt Applicant's mark as a trademark, including but not limited to:

- (a) the reason and rationale behind the adoption of Applicant's mark; and
- (b) the identity of the person or persons who originally conceived and suggested use of Applicant's mark.

INTERROGATORY NO. 5

State the names, addresses, and titles or positions of each person participating in, approving of, or having knowledge of the selection, adoption and first use of Applicant's mark.

INTERROGATORY NO. 6

For each good and service identified in answer to Interrogatory No. 1, identify each advertisement, for each such good and service which has been, or is intended to be published, broadcast, or displayed and for each such advertisement:

- (a) state the date on which it was or will be published, broadcast, displayed or distributed;
- (b) of a print media advertisement, identify the publication in which such advertisement appeared or will appear by name, date and page number;
- (c) if a broadcast advertisement, identify the radio or television station or network over which such advertisement was, or will be broadcast and state the length of the commercial and the date and time of the broadcast;
- (d) if an internet advertisement, identify the website upon which such advertisement appeared or was displayed by name, date, and URL address; and
- (e) state the total amount of money spent or budgeted for such advertisement or commercial, including but not limited to, costs of space or time, production costs, and agency commissions.

INTERROGATORY NO. 7

For each good and service identified in answer to Interrogatory No. 1, identify all press releases, catalogues, circulars, leaflets, sales or promotional literature, brochures, bulletins, fliers, signs, sales displays, posters, point of purchase displays and other promotional material for such goods and services which have been, are, or intended to be distributed or displayed in the United States by or on behalf of Applicant, and for each such

item:

- (a) state each date on which or the inclusive dates during which said item was or is to be distributed and the manner in which said item was or is to be distributed; and
- (b) state the geographic area (by city, county or state) where said item or copies thereof were or will be distributed or displayed.

INTERROGATORY NO. 8

Identify each mark used by Applicant or which Applicant intends to use which incorporates Opposers' Trademark or Applicant's mark, or any variation thereof; and identify each good or service on which or for which each stated mark has been, is, or is intended to be, or will be used.

INTERROGATORY NO. 9

For each good and service identified in Applicant's response to Interrogatory No. 1, state the exact dates on which Applicant will rely, as to each good and services, as the date of first use of Applicant's mark in connection with the sale or distribution of the goods and services.

INTERROGATORY NO. 10

For each good and service identified in answer to Interrogatory No. 1, state the method, fashion or manner in which Applicant promotes or intends to promote the goods and services under Applicant's mark.

INTERROGATORY NO. 11

Describe in detail the trade channels for each product or service which was or is sold, offered for sale or provided by Applicant under the Applicant's mark.

INTERROGATORY NO. 12

Identify each type of purchaser or end user for the products or services of Applicant which have been sold, offered for sale or provided under the Applicant's mark.

INTERROGATORY NO. 13

For each good and service identified in answer to Interrogatory No. 1, identify by name, address, and present employer each and every person(s) or organization(s) who has been or will be responsible for advertising and/or promoting the product or service.

INTERROGATORY NO. 14

Identify all of Applicant's related companies including identification of the relationship between Applicant and each related company, including but not limited to, Applicant and its parent company.

INTERROGATORY NO. 15

For the goods and services identified in answer to Interrogatory No. 1, describe how the Applicant's mark was used in connection with each such good and service for each year from its inception to the present. For each such year provide:

- (a) a brief description of the method, fashion or manner in which the mark was

used;

- (b) the amount of sales for each such good and service;
- (c) identify the customers for each such good and service; and
- (d) identify all advertisements, promotional materials, press releases, advertisements, tags, labels, and sale displays for each such good and service.

INTERROGATORY NO. 16

For each good and service identified in answer to Interrogatory No. 1, state whether you have promoted such goods and services at any conventions, trade shows or exhibitions, or have plans to do so, and if so, state the title, dates and location of each such convention, trade show or exhibition.

INTERROGATORY NO. 17

For each good and service identified in Interrogatory No. 1, state the total sales in the United States in terms of the number of times such goods and services were offered or sold and the income derived therefrom for each year from its inception to the present.

INTERROGATORY NO. 18

In reference to each and every good and service identified in answer to Interrogatory No. 1:

- (a) state the prices charged for such goods and services in each year from its inception to the present;
- (b) describe how such goods and services are provided or otherwise available

to consumers in each year from its inception to the present; and

(c) identify the geographical areas in the United States wherein Applicant's goods and services are offered and provided for each year from its inception to the present.

INTERROGATORY NO. 19

(a) Identify all tags, labels, invoices, decals, packaging, cartons, point-of-purchase displays, websites, and other written materials which show Applicant's use of Applicant's mark in the United States in connection with Applicant's goods and services from 2003 to the present, and specify the periods during which each identified item is allegedly used.

(b) In lieu of identifying each such item and/or document, an actual sample of each type of same may be attached to the response of these interrogatories with dates and duration of use indicated.

INTERROGATORY NO. 20

State whether Applicant or any individual company or organization acting on Applicant's behalf have conducted or authorized any individual or organizations to conduct a trademark search, survey, investigation, study or market test (hereinafter "Survey") relating to either Applicant's mark or Opposer's Trademark or the goods and services provided under those marks including, but not limited to, surveys relating to public recognition, consumer acceptance, secondary meaning or confusion, and Internet searches (such as those on Google or Yahoo!) and if so, identify:

- (a) each individual or entity who was or is in charge of conducting each Survey;
- (b) each report or summary of the results thereof, whether written or oral, and if oral, state the contents thereof and identify the persons making and receiving such report or summary and each persons having knowledge thereof; and
- (c) each document relating to, reflecting, supporting or generating in the consideration, planning, conduct or reporting of any such Survey or the results or substance thereof.

INTERROGATORY NO. 21

Identify each expert witness's testimony you may or will rely upon in connection with any issue in this proceeding and with respect to each such witness state:

- (a) the subject matter on which he or she is expected to testify; and
- (b) state the substance of the facts and opinions on which the expert is expected to testify, and summarize the ground for each opinion.

INTERROGATORY NO. 22

State the date and circumstances by which Applicant first became aware of Opposer's use of the Opposer's Trademark and/or the application thereof, and identify the person who learned of Applicant's use and any and all written communications concerning, relating to, connecting with or arising out of the knowledge of Opposer's use.

INTERROGATORY NO. 23

Identify any and all agreements, grants, licenses and assignments concerning

Applicant's mark and identify all documents referring or relating to each such agreement, grant, license and assignment and each amendment or modification thereof.

With respect to each and every one of the foregoing interrogatories and subparts thereof:

(a) identify each person from whom information was obtained to answer each interrogatory;

(b) identify the person(s) who gathered the information used in preparing Applicant's answers to these interrogatories;

(c) identify the person(s) who prepared and/or participated in the preparation of the answer to each interrogatory;

(d) identify the person(s) having responsibility for verifying the accuracy of Applicant's answers to these interrogatories;

(e) identify the documents and records consulted to obtain such information; and

(f) where no information or only partial information is given in such answer, a description of the efforts made to locate information responsive to such interrogatory.

INTERROGATORY NO. 24

Identify each telephone call, invoice, letter or other communication, whether written or verbal, that was meant for or that referred or related to Opposer, to Opposer's Trademark, that Applicant has received, initiated or produced, or of which Applicant has otherwise become aware, by stating:

(a) the date, or if not possible, the approximate date of the communication;

(b) the name, address, and title of each person who received or became aware

of the communication;

(c) the action taken by Applicant, if any, in response to the communication; and

(d) the name, address, position and business affiliation of each person who sent the communication to or received the communication from Applicant.

INTERROGATORY NO. 25

Set forth all facts on which Applicant bases its First Affirmative Defense.

INTERROGATORY NO. 26

Set forth all facts on which Applicant bases its Second Affirmative Defense.

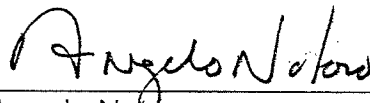
INTERROGATORY NO. 27

Set forth all facts on which Applicant bases its Third Affirmative Defense.

INTERROGATORY NO. 28

Set forth all facts on which Applicant bases its Fourth Affirmative Defense.

Dated: May 23, 2007



Angelo Notaro
John Zaccaria
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100
(845) 359-7700
Attorneys for Opposer

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Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001



Demetra Falto

Swinger International SPA,	:	
	:	Opposition No. 91175750
Opposer,	:	
	:	
v.	:	
	:	
Tsz Wai Cheng,	:	
	:	
Applicant.	:	

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Section 410 of the Trademark Trial and Appeal Board Manual of Procedure, and Section 2.120(h) of the Trademark Rules of Practice, Opposer, Swinger International SPA (hereinafter referred to as "Opposer"), hereby requests that Applicant, Tsz Wai Cheng (hereinafter "Applicant"), admit or specifically deny the truth of the following matters within thirty (30) days of service hereof.

A. DEFINITIONS AND INSTRUCTIONS

- 7 -

78/831,113.

2. "Opposer's Trademark" shall mean the trademark "BYBLOS".
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- (b) for oral communications: (1) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the person present to the person making the communication; (2) the date and place of communication; (3) the general subject matter of the communication.

B. REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1

Admit, separately for each of the following goods, that Applicant had not used Applicant's mark in commerce therewith as of March 7, 2006.

- (a) bathrobes
- (b) beachwear
- (c) belts (garments)
- (d) blouses

- (e) body suits
- (f) booties
- (g) boots
- (h) bottoms
- (i) boxer shorts
- (j) caps
- (k) cardigans
- (l) coats
- (m) coats of denim
- (n) coveralls
- (o) creepers
- (p) denim jackets
- (q) denims
- (r) dresses
- (s) footwear
- (t) gloves
- (u) hats
- (v) infant and toddler one piece clothing
- (w) jackets
- (x) jeans
- (y) jogging suits
- (z) jumpers
- (aa) jumpsuits

- (ab) knit shirts
- (ac) loungewear
- (ad) night shirts
- (ae) overalls
- (af) pajamas
- (ag) pants
- (ah) gussets for tights
- (ai) gussets for stockings
- (aj) gussets for bathing suits
- (ak) gussets for underwear
- (al) gussets for leotards
- (am) gussets for footlets
- (an) rain coats
- (ao) sandals
- (ap) shirts
- (aq) shoes
- (ar) shorts
- (as) skirts
- (at) slacks
- (au) sleepwear
- (av) slippers
- (aw) socks
- (ax) sweat pants

- (ay) sweat shirts
- (az) sweat shorts
- (ba) sweat suits
- (bb) sweaters
- (bc) swimsuits
- (bd) T-shirts
- (be) tank tops
- (bf) tops
- (bg) undershirts
- (bh) vests

REQUEST FOR ADMISSION NO. 2

Admit, separately for each of the following goods, Applicant knew at the time the Application No. 78/831,113 was filed on or about March 7, 2006 that Applicant's mark had not been used in commerce on or in connection with:

- (a) bathrobes
- (b) beachwear
- (c) belts (garments)
- (d) blouses
- (e) body suits
- (f) booties
- (g) boots
- (h) bottoms

- (i) boxer shorts
- (j) caps
- (k) cardigans
- (l) coats
- (m) coats of denim
- (n) coveralls
- (o) creepers
- (p) denim jackets
- (q) denims
- (r) dresses
- (s) footwear
- (t) gloves
- (u) hats
- (v) infant and toddler one piece clothing
- (w) jackets
- (x) jeans
- (y) jogging suits
- (z) jumpers
- (aa) jumpsuits
- (ab) knit shirts
- (ac) loungewear
- (ad) night shirts
- (ae) overalls

- (af) pajamas
- (ag) pants
- (ah) gussets for tights
- (ai) gussets for stockings
- (aj) gussets for bathing suits
- (ak) gussets for underwear
- (al) gussets for leotards
- (am) gussets for footlets
- (an) rain coats
- (ao) sandals
- (ap) shirts
- (aq) shoes
- (ar) shorts
- (as) skirts
- (at) slacks
- (au) sleepwear
- (av) slippers
- (aw) socks
- (ax) sweat pants
- (ay) sweat shirts
- (az) sweat shorts
- (ba) sweat suits
- (bb) sweaters

(bc) swimsuits

(bd) T-shirts

(be) tank tops

(bf) tops

(bg) undershirts

(bh) vests

REQUEST FOR ADMISSION NO. 3

Admit that Opposer used Opposer's Trademark in connection with clothing prior to any use of Applicant's mark by Applicant.

REQUEST FOR ADMISSION NO. 4

Admit that Opposer's Trademark was "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127 prior to March 7, 2006.

REQUEST FOR ADMISSION NO. 5

Admit that Opposer's Trademark was "famous" within the meaning of the Federal Trademark Dilution Act, 15 U.S.C. §§ 1125(c) and 1127 prior to March 7, 2006 prior to any use of Applicant's mark by Applicant.

REQUEST FOR ADMISSION NO. 6

Admit that goods identified in trademark Application No. 78/831,113, as published, are intended to be used by consumers.

Dated: May 23, 2007

A handwritten signature in cursive script, appearing to read "Angelo Notaro", is positioned above a horizontal line.

Angelo Notaro
John Zaccaria
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100
(845) 359-7700
Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing ***Opposer's First Requests for Admission to Applicant*** has been served by causing a copy thereof to be sent first class mail, postage prepaid, on May 23, 2007 to:

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001


Demetra Falto

Applicant.

Opposition No. 91175750

-1-

Opposer owns the mark BYBLOS registered in the United States Patent and Trademark Office for jackets, trench coats, overcoats, shirts, skirts, pants, T-shirts, belts, scarves and kerchiefs.

Applicant filed an answer on April 2, 2004, denying the allegations of the Notice of Opposition.

II. Statement of Facts

Opposer served Applicant with its first set of discovery requests May 23, 2007. Attached hereto as Exhibit A are copies of the following:

- Opposer's First Document Requests to Applicant;
- Opposer's First Interrogatories to Applicant; and
- Opposer's First Requests for Admissions to Applicant

Although Applicant's responses to Opposer's discovery requests were originally due June 27, 2007, Applicant did not respond and Applicant did not request an extension of the deadline.

On July 6, 2007, Opposer's counsel informed Applicant's counsel, without prejudice, that Applicant's discovery responses were past due, as evidenced by an email from Opposer's counsel to Applicant's counsel, attached to the Declaration of Angelo Notaro, Esq. ("Notaro Declaration") as Exhibit A. Opposer's counsel responded that he would "endeavor to address those in the next two weeks". Notaro Declaration Exhibit B.

Opposer's counsel did not receive any of the promised discovery responses. On July 28, 2007, Opposer's counsel sent an email, a copy of which is attached to the Notaro Declaration as Exhibit C, to counsel for Applicant regarding the lack of discovery responses

and noted that the appropriate relief would be sought if satisfactory responses were not received by July 31, 2007. Opposer's counsel responded by email on July 28, 2007 stating that his client was difficult to reach "and I believe he is overseas for weeks at a time". Notaro Declaration Exhibit D.

No responses to the discovery and no request for an extension of time to respond were received. No commitment was made by Applicant to comply with discovery rules and obligations.

On August 16, 2007, Opposer's counsel sent a letter, a copy of which is attached to the Notaro Declaration as Exhibit E, to counsel for Applicant regarding the lack of discovery responses. This letter also served as a good faith effort to confer with counsel for Applicant, pursuant to 37 C.F.R. § 2.120(e). Opposer's counsel received no response to the August 16, 2007 letter.

As of the date of this Motion, Applicant has still not responded to Opposer's initial discovery requests in this proceeding, which were originally served on Applicant in May 2007. Applicant's failure to respond to Opposer's discovery requests, coupled with counsel's failure to cure and/or respond to Opposer's inquiries about that failure to respond, leaves Opposer with no alternative but to seek an order from the Board compelling Applicant's discovery responses.

III. Argument

It is a fundamental maxim of the liberal federal discovery rules, which are made applicable to trademark opposition proceedings before this Board under the authority of 37 C.F.R. § 2.116, that "mutual knowledge of all the relevant facts gathered by both parties

is essential to proper litigation.” *Societe Nationale Industrielle Aeropatie v. United States District Court for the Southern District of Iowa*, 482 U.S. 522 (1987) (quoting *Hickman v. Taylor*, 329 U.S. 495, 507 (1947)).

In addition, to the obvious benefit of allowing the parties to better prepare for trial, full and candid discovery has significant pre-trial benefits, namely identifying, and perhaps simplifying, the issues for trial, revealing a potential basis for a motion for summary judgment and, in many cases, encouraging parties to realistically evaluate their cases, which often leads to a settlement of the underlying dispute. See TBMP § 401.

Recognizing these significant benefits, the Board has strongly urged parties in opposition and cancellation proceedings to cooperate with one another in the discovery process. Indeed, section 401 of the TBMP specifically state that “[t]he Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, and **looks with extreme disfavor upon those which do not.**” TBMP §§ 401, 412.01 (emphasis added).

In the instant case, despite the fact that months have past since Opposer first served its discovery requests upon Applicant, Opposer has received absolutely nothing by way of substantive responses. Applicant’s failure to respond has deprived both Opposer and the Board of the benefits that accrue from a robust discovery process, most notably the ability to identify the critical issues and to prepare for trial in an informed fashion. Applicant should not be allowed to unilaterally frustrate the discovery process by withholding information that may be necessary for Opposer to prove its case, thereby gaining unfair advantage in this proceeding. See, e.g., *Bison Corporation v. Perfecta*

Chemie B. V., 4 U.S.P.Q.2d 1718, 1720 (T.T.A.B. 1987) (“It is unfair for a party to withhold documents requested or refuse to answer interrogatories posed by its adversary...”).

Applicant’s unilateral decision not to participate in the process is not only manifestly unfair, it is also violative of the rules governing these proceedings. Responses to interrogatories, document production requests and requests for admission must be served within thirty (30) days from the date of service, with an additional five (5) days allowed if service is effected via first class mail. See Fed.R.Civ.P. 33(b)(3), 34(b); TBMP §§ 407.01, 409.01. See also 37 C.F.R. § 2.119(c); *Crane Co. v. Shimano Industrial Co., Ltd.*, 184 U.S.P.Q. 691 (T.T.A.B. 1975).

There is no question that Applicant is in violation of these provisions, as ***Applicant has simply not responded at all.*** Applicant’s responses are currently more than two months past due. As a result of this failure to respond within the reasonable prescribed period of time, Applicant has waived its right to object to Opposer’s requests and is now obligated to provide full responses, complete and unqualified responses. See *id.* (“Inasmuch as applicant failed to respond ..., applicant has waived its right to object to the interrogatories on their merits and must reply to them as put.”).

It is well established that litigants “cannot be permitted to frustrate discovery by refusing to comply with a proper request.” *Al Barnett & Son, Inc. v. Outboard Marine Corp.*, 611 F.2d 32, 35 (3d Cir. 1979) (citing *Cine Forty-Second Street Theatre v. Allied Artists Pictures Corp.*, 602 F.2d 1062, 1068-69 (2d Cir. 1979) (Oakes, J., concurring). “To permit litigants to disregard the responsibilities that attend the conduct of litigation would be tantamount to ‘encouraging dilatory tactics.’” *Id.*

The Board does not permit litigants to disregard their discovery obligations, and it has not hesitated to grant a motion to compel discovery responses where a party's responses have not been forthcoming. *See, e.g., Crane, supra* (granting opposer's motion to compel discovery following applicant's failure to respond to opposer's interrogatories). Opposer asks for the same redress here, where Applicant's disregard for its discovery obligations is evident from the undisputed record.

Therefore, Opposer respectfully requests that the Board issue an order requiring Applicant to provide complete and unqualified responses to Opposer's first set of discovery responses. Moreover, in view of the expense associated with filing this Motion to Compel. Opposer respectfully requests that the Board order that, with respect to documents responsive to Opposer's discovery requests, Applicant must photocopy and mail those documents to Opposer at Applicant's expense. *See, e.g., Unicut Corporation v. Unicut, Inc.*, 220 U.S.P.Q. 1013 (T.T.A.B. 1983).

TBMP § 527.01, in pertinent part, states:

If a party upon which requests for admission have been served fails to file a timely response thereto, the requests will stand admitted (automatically), and may be relied upon by the propounding party pursuant to 37 C.F.R. § 2.120(j)(3)(i), unless they party upon which the requests were served is able to show that its failure to timely respond was the result of excusable neglect; or unless a motion to withdraw or amend the admissions is filed pursuant to Fed. R.Civ.P. 36(b), and granted by the Board.

Applicant has not answered the requests for admissions and has not requested withdrawal or amendment of the admissions. Fed. R.Civ.P. 36 (a) provides that a matter is admitted unless a response is timely served or "the [Board] on motion permits withdrawal or amendment of the admission". In that Applicant has not responded to Opposer's

requests for admissions, nor filed a motion to withdraw or amend those admissions, those matters are “conclusively established”. Fed. R.CIV.P. 36 (b).

In accordance with the provisions of 37 C.F.R. 2.1209j)(3)(i), it is appropriate to order that the Opposer’s requests for admissions automatically stand admitted.

Finally, as Opposer has been deprived of the opportunity to review Applicant’s discovery responses in order to seek supplemental discovery, Opposer respectfully requests that, once Applicant has fully complied with its discovery responsibilities, the Board reopen the discovery period for a period of thirty (30) days. Opposer would also ask for its testimony period to be reset, in order for Opposer to have ample opportunity to review Applicant’s discovery responses and documents, once those have been turned over.

IV. Conclusion

This Motion does not involve a complicated fact pattern or raise a new issue of law. To the contrary, the instant Motion is straightforward. Opposer serves proper and timely discovery requests in May, 2007. Applicant never objected to such requests. Applicant has chosen not to respond to the discovery requests, and furthermore, has refused to cooperate with Opposer’s good faith attempts to resolve the dispute arising from Applicant’s failure to respond. In such a case, Opposer is entitled to an order compelling Applicant to provide full, complete and unqualified responses to Opposer’s requests, so that Opposer can properly prepare for trial in this matter.

Therefore, for the reasons set forth above, and pursuant to 37 C.F.R. § 2.120 (e) and Fed.R.Civ.P.37, Opposer respectfully requests that the Board enter an Order:

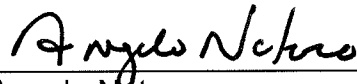
1. requiring Applicant to provide full, complete and unqualified answers to

- Opposer's discovery requests, as set forth in Exhibit A hereto;
2. requiring Applicant to photocopy and mail responsive documents to Opposer at Applicant's expense; and
 3. deeming the requests for admissions, as set forth in Exhibit A, admitted.

Opposer further respectfully requests that the Board reset the trial dates, including the time for discovery, to allow Opposer a reasonable period of time and, in any case, not less than thirty days from the date on which Applicant is required to respond to Opposer's discovery requests, in which to propound supplemental discovery requests to Applicant.

Dated: August 27, 2007

Respectfully submitted,



Angelo Notaro
John Zaccaria
NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100
(845) 359-7700
Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37** has been served by causing a copy thereof to be sent first class mail, postage prepaid, on August 27, 2007 to:

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001


Demetra Falto

CERTIFICATE OF MAILING

I hereby certify that **MEMORANDUM IN SUPPORT OF MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37** is being deposited on August 27, 2007 with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Commissioner for Trademarks
ATTN: Trademark Trial and Appeals Board
P.O. Box 1451
Alexandria, VA 22313-1451



Demetra Falto

Applicant.

Opposition No. 91175750

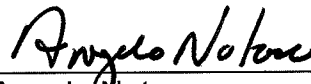
**DECLARATION OF ANGELO NOTARO IN SUPPORT OF
MOTION TO COMPEL RESPONSES TO OPPOSER’S DISCOVERY REQUESTS
UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37**

Angelo Notaro, declares that:

1. I am an attorney with the law firm of Notaro & Michalos P.C., which maintains an office at 100 Dutch Hill Road, Suite 110, Orangeburg, New York 10962-2100, and represent Opposer in the above-captioned matter.
2. Attached hereto as Exhibit A is a true and correct copy of email which I transmitted to Jeffrey Dweck, Esq., on July 6, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of an email dated July 6, 2007, which I received from counsel for Applicant, in response to Exhibit A in which Mr. Dweck indicates he will endeavor to address those [sic] in the next two weeks.
4. Attached hereto as Exhibit C is a true and correct copy of an email dated July 28, 2007, which I sent to Jeffrey Dweck, Esq., counsel for Applicant, regarding Applicant's continued failure to respond to Opposer's discovery requests.
5. Exhibit D is a true and correct copy of an email dated July 28, 2007 which I received from Mr. Dweck in response to Exhibit C indicates that his client has been difficult to reach and stating "I believe [he is] overseas for weeks at a time."
6. Exhibit E acted as a good faith attempt to good faith effort to confer with counsel for Applicant, pursuant to 37 C.F.R. § 2.120(e). Applicant's counsel dd not respond to this letter.
7. To date, Applicant has not responded to any of Opposer's discovery requests.
8. I hereby certify that a good faith attempt to confer with counsel for Applicant was made prior to the filing of Opposer's Motion to Compel, pursuant to 37 C.F.R. § 2.120(e).

I hereby declare under penalties of perjury that the above is true and correct to the best of my knowledge and belief. Executed in the 27th day of August, 2007.



Angelo Notaro

EXHIBIT A

Angelo Notaro

From: Angelo Notaro [anotaro@notaromichalos.com]
Sent: Friday, July 06, 2007 11:42 AM
To: Jeffrey Dweck (Jeffrey@dweckny.com)
Cc: ~NMPC Mailbox (nmpc@notaromichalos.com)
Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Dear Mr. Dweck:

We have not received responses to Opposer's first interrogatories, document request and requests for admission which were served by mail on May 23, 2007.

The responses are well past due. Without prejudice to our client's rights, we request that you inform us of the status of the responses and provide us with the responses without further delay.

Angelo Notaro
Notaro & Michalos P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962
Phone: (845) 359-7700
Fax: (845) 359-7798

7/6/2007

EXHIBIT B

Angelo Notaro

From: Jeffrey Dweck [jeffrey@dweckny.com]
Sent: Friday, July 06, 2007 12:19 PM
To: Angelo Notaro
Cc: ~NMPC Mailbox
Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

I will endeavor to address those in the next 2 weeks.

-----Original Message-----

From: Angelo Notaro <anotaro@notaromichalos.com>
Sent: Friday, July 06, 2007 11:43 AM
To: Jeffrey Dweck <Jeffrey@dweckny.com>
Cc: ~NMPC Mailbox <nmpc@notaromichalos.com>
Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Dear Mr. Dweck:

We have not received responses to Opposer's first interrogatories, document request and requests for admission which were served by mail on May 23, 2007.

The responses are well past due. Without prejudice to our client's rights, we request that you inform us of the status of the responses and provide us with the responses without further delay.

Angelo Notaro

Notaro & Michalos P.C.

100 Dutch Hill Road, Suite 110

Orangeburg, New York 10962

Phone: (845) 359-7700

Fax: (845) 359-7798

EXHIBIT C

Angelo Notaro

From: Angelo Notaro [anotaro@notaromichalos.com]
Sent: Saturday, July 28, 2007 9:56 AM
To: 'Jeffrey Dweck'
Cc: ~NMPC Mailbox (nmipc@notaromichalos.com)
Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Mr. Dweck:

This communication is made without prejudice to all rights and remedies of the Opposer, Swinger International SpA.

We still have not received any responses to the discovery which was served on behalf of our client on May 23, 2007. Responses were due on June 27, 2007.

You did not request an extension of the time to respond and when I contacted you on July 6th you indicated that you would endeavor to reply in 2 weeks. I responded that we expected to receive responses by July 20th. You neither objected nor requested any extension, but have still not responded to the opposer's discovery.

Accordingly, rules and precedents, opposer's requests for admission are deemed admitted and all objections to the propounded discovery are waived.

If your client is not going to properly participate in the opposition and respect the applicable rules of procedure, and/or is longer interested in proceeding with its application, we request that you withdraw the opposed application without delay.

In the absence of a satisfactory resolution of this matter by Wednesday, July 31st, we will seek appropriate relief on behalf of the Opposer.

Angelo Notaro
Notaro & Michalos P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962

-----Original Message-----

From: Angelo Notaro [mailto:anotaro@notaromichalos.com]
Sent: Saturday, July 07, 2007 1:15 PM
To: 'Jeffrey Dweck'
Cc: '~NMPC Mailbox'; ~NMPC Mailbox (nmipc@notaromichalos.com)
Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Mr. Dweck

We will accordingly expect to receive responses to opposer's discovery demands by or before July 20, 2007.

Angelo Notaro

-----Original Message-----

From: Jeffrey Dweck [mailto:jeffrey@dweckny.com]
Sent: Friday, July 06, 2007 12:19 PM
To: Angelo Notaro
Cc: ~NMPC Mailbox
Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

I will endeavor to address those in the next 2 weeks.

-----Original Message-----

From: Angelo Notaro <anotaro@notaromichalos.com>
Sent: Friday, July 06, 2007 11:43 AM
To: Jeffrey Dweck <Jeffrey@dweckny.com>

Cc: ~NMPC Mailbox <nmpc@notaromichalos.com>

Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

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The responses are well past due. Without prejudice to our client's rights, we request that you inform us of the status of the responses and provide us with the responses without further delay.

Angelo Notaro

Notaro & Michalos P.C.

100 Dutch Hill Road, Suite 110

Orangeburg, New York 10962

Phone: (845) 359-7700

Fax: (845) 359-7798

EXHIBIT D

Angelo Notaro

From: Jeffrey Dweck [jeffrey@dweckny.com]
Sent: Saturday, July 28, 2007 10:43 PM
To: Angelo Notaro
Cc: ~NMPC Mailbox
Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

My client has been difficult to reach and I believe overseas for weeks at a time.

What specifically is your client looking for? Is there a possibility for concurrent use or some other resolution, i.e. Our client would limit its use to its stylized form only?

-----Original Message-----

From: Angelo Notaro <anotaro@notaromichalos.com>
Sent: Saturday, July 28, 2007 9:57 AM
To: 'Jeffrey Dweck' <jeffrey@dweckny.com>
Cc: ~NMPC Mailbox <nmpc@notaromichalos.com>
Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Mr. Dweck:

This communication is made without prejudice to all rights and remedies of the Opposer, Swinger International SpA.

We still have not received any responses to the discovery which was served on behalf of our client on May 23, 2007. Responses were due on June 27, 2007.

You did not request an extension of the time to respond and when I contacted you on July 6th you indicated that you would endeavor to reply in 2 weeks. I responded that we expected to receive responses by July 20th. You neither objected nor requested any extension, but have still not responded to the opposer's discovery.

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In the absence of a satisfactory resolution of this matter by Wednesday, July 31st, we will seek appropriate relief on behalf of the Opposer.

Angelo Notaro
Notaro & Michalos P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962

-----Original Message-----

From: Angelo Notaro [mailto:anotaro@notaromichalos.com]
Sent: Saturday, July 07, 2007 1:15 PM
To: 'Jeffrey Dweck'
Cc: '~NMPC Mailbox'; ~NMPC Mailbox (nmpc@notaromichalos.com)
Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

Mr. Dweck

We will accordingly expect to receive responses to opposer's discovery demands by or before July 20, 2007.

Angelo Notaro

-----Original Message-----

From: Jeffrey Dweck [mailto:jeffrey@dweckny.com]

Sent: Friday, July 06, 2007 12:19 PM

To: Angelo Notaro

Cc: ~NMPC Mailbox

Subject: RE: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

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-----Original Message-----

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Sent: Friday, July 06, 2007 11:43 AM

To: Jeffrey Dweck <Jeffrey@dweckny.com>

Cc: ~NMPC Mailbox <nmpc@notaromichalos.com>

Subject: G96-176, Swinger International SpA v. Taz Wai Cheng, Opposition No. 91175750

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The responses are well past due. Without prejudice to our client's rights, we request that you inform us of the status of the responses and provide us with the responses without further delay.

Angelo Notaro

Notaro & Michalos P.C.

100 Dutch Hill Road, Suite 110

Orangeburg, New York 10962

Phone: (845) 359-7700

Fax: (845) 359-7798

EXHIBIT E

ANGELO NOTARO
PETER C. MICHALOS
JOHN ZACCARIA
CHIH-SHENG LIN
OF COUNSEL
FRANK J. COLUCCI

LAW OFFICES
NOTARO & MICHALOS P.C.
100 DUTCH HILL ROAD
SUITE 110
ORANGEBURG, NEW YORK 10962-2100
TELEPHONE: 845-359-7700
FAX: 845-359-7798
E-MAIL: nmipc@notaromichalos.com

1400 BROADWAY
SUITE 2307
NEW YORK, NEW YORK 10018-0644
TELEPHONE: 212-278-8600
FAX: 212-278-8687
PATENTS
TRADEMARKS
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August 16, 2007

Via Fax (212) 502-2010

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001

WITHOUT PREJUDICE

Re: Swinger International S.p.A.
v. Tsz Wai Cheng
Opposition of U.S. Trademark Application No. 78/831,113
TM: BYBLE & Design
Our Ref. G96-176

Dear Mr. Dweck:

I am writing to you in connection with the above-captioned opposition.

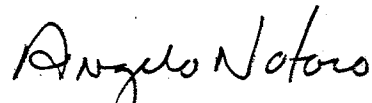
This will confirm that the applicant, Cheng, Tze Wai, has not responded to Swinger International S.p.A.'s discovery requests, served May 23, 2007.

For purposes of filing a motion to compel responses to Opposer's discovery request, this letter will serve as Opposer's good faith effort to confer with counsel for Applicant, pursuant to 37 C.F.R. § 2.120(e). As we have previously communicated with you in this regard, if discovery responses are not received by August 23, 2007, we will file a motion to compel.

This letter is sent, without prejudice, and Opposer reserves all of its rights including the right to obtain rulings from the Board deeming requests for admissions to be admitted and any objections to the discovery requests to be deemed waived.

Very truly yours,

Notaro & Michalos P.C.


Angelo Notaro

AN:df

M:\LITIGATE\G96-176\Letters\G96-176-4n.wpd

TRANSACTION REPORT

P.01

AUG-16-2007 THU 05:08 PM

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August 16, 2007

Via Fax (212) 502-2010

WITHOUT PREJUDICE

Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001

Re: Swinger International S.p.A.
v. Tsz Wai Cheng
Opposition of U.S. Trademark Application No. 78/831,113
TM: BYBLE & Design
Our Ref. G96-176

Dear Mr. Dweck:

I am writing to you in connection with the above-captioned opposition.

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **DECLARATION OF ANGELO NOTARO IN SUPPORT OF MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37** has been served by causing a copy thereof to be sent first class mail, postage prepaid, on August 27, 2007 to:


Jeffrey S. Dweck, Esq.
100 West 33rd Street, Suite 1017
New York, New York 10001


Demetra Falto

CERTIFICATE OF MAILING

I hereby certify that **DECLARATION OF ANGELO NOTARO IN SUPPORT OF MOTION TO COMPEL RESPONSES TO OPPOSER'S DISCOVERY REQUESTS UNDER 37 C.F.R. § 2.120(e) AND FED.R.CIV.P.37** is being deposited on August 27, 2007 with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

Commissioner for Trademarks
ATTN: Trademark Trial and Appeals Board
P.O. Box 1451
Alexandria, VA 22313-1451



Demetra Falto